

A. G. Contract No.: KR02-1465TRN
ADOT ECS File No.: JPA 02-66
TRACS No.: 095 MO 241 / H6400 01(R/D/C)
Project: SR 95
Section: Fox Wash Drainage Facility
BUDGET SOURCE ITEM NO.: 25503 (D & C)
BUDGET SOURCE ITEM NO.: 71104 (R/W)

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF BULLHEAD CITY

THIS AGREEMENT is entered into 21 November, 2003, SUPERCEDES JPA 93-189, executed 12 September, 1994 and filed with the Secretary of State under No. 18907 pursuant to Arizona Revised Statutes, Sections 11-951 et seq., as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF BULLHEAD CITY, acting by and through its MAYOR and CITY COUNCIL (the "City").

RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has delegated to the undersigned the authority to execute this agreement behalf of the State.
2. The City is empowered by Arizona Revised Statutes Section 48-572 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the City.
3. City and State entered into a joint participation agreement known as JPA 93-189, which provided for the joint construction of certain drainage facilities in the Fox Wash area, which were intended to direct water under State Route (SR) 95 in Bullhead City.
4. The City did not anticipate the amount of construction and right-of-way costs necessary to comply with JPA 93-189. Therefore, the City did not complete its portion of the project.
5. The Section 404 permits from the Corps of Engineers which are required to construct the drainage facilities in the Fox Wash area, will expire on March 5, 2004. Construction of the improvements must be commenced prior to the expiration date of the permits.

NO. 26458
Filed with the Secretary of State
Date Filed: 11/21/03

Janice K. Brewer
Secretary of State

By: Vinny D. Hoeneveld

6. The City and the State dispute the relative rights and obligations of the parties under JPA 93-189.

7. Accordingly, the parties desire to resolve their disputes and provide for the construction of the drainage facilities in the Fox Wash area, herein referred to as the "Fox Wash Project" or the "Project". This Agreement shall set forth the parties' respective rights and obligations.

THEREFORE, in consideration of the agreements expressed herein, it is agreed as follows:

I. SCOPE OF WORK

1. Obligations of the City

- a. The City shall prepare, to State standards, design plans and specifications and provide all other documents and services required for construction of the Fox Wash Project.
- b. The City shall coordinate with the State and incorporate review comments as appropriate.
- c. The City and the State agree that the City has complied with paragraphs (a) and (b) above.
- d. The City shall request a temporary construction easement (permit) for any work performed within the State's right of way, through the State's Kingman District Permits Office.
- e. Upon receipt of written approval by the State of the plans, the City shall call for bids, and award one or more construction contracts to complete the Project.
- f. The City shall administer the Project and make all payments to the contractor(s), at no cost to the State.
- g. The City shall confer with, and obtain written approval from the State, on any contract modifications.
- h. The City shall be responsible for any contractor claims not attributable to the State.
- i. No more often than monthly, the City shall invoice the State, for the actual costs of design and construction of the portion of the Fox Wash Project within the State's right-of-way, subject to the provisions of paragraph I(2)(e) below.
- j. Upon completion of construction, the City shall coordinate the final construction inspection of the Fox Wash Project with the State. Provided the State is satisfied with the City's work, the State shall provide written approval thereof.
- k. The City shall maintain the entire Project within the State's and the City's rights of way during construction. After completion of construction, the City shall maintain the portion of the Project within the City's right of way.

2. Obligations of the State

- a. The State shall provide the City its previous design plans to be incorporated into the City's project design plan.
- b. The State shall review and provide comments to the City's plans prior to award.
- c. Provided the State is satisfied with the City's plans, the State shall provide written approval thereof.

- d. The State and the City agree that the State has complied with paragraphs (a), (b) and (c) above.
- e. After receipt and approval of an invoice from the City, the State shall reimburse the City for the costs associated with the design and construction of the project within the State's right of way, subject to the following conditions.
 - i. The City and the State agree that the State's contribution for the design costs shall be \$30,000.00.
 - ii. The City and the State agree that the State's contribution for the construction costs within the State's right of way will be the lesser of \$405,000.00 or the actual costs associated with the construction based on bid unit prices.
 - iii. The City and the State agree that the State's contributions for the design and construction costs shall not increase regardless of any additional work required for the project.
- f. Upon completion of construction, the State shall maintain the portion of the Fox Wash Project improvements constructed within the State's right of way.

II. ACQUISITION OF RIGHT OF WAY

1. All rights of way needed for the Project will be acquired in the name of the City. The City, State and the Attorney General's Office agree that the State's right of way and acquisition agents, and its legal counsel, the Arizona Attorney General's Office, may negotiate, litigate and perform all other actions on behalf of the City as may be necessary to acquire the right of way.

2. The City shall indemnify, defend, and hold the State and the Attorney General's Office and their employees, harmless from any loss, costs, fees, damages, or any other liability of any nature which arise or result from the performance or non-performance of the Attorney General's Office pursuant to this Agreement.

III. ACQUISITION COSTS

1. The City and State shall share equally in the acquisition costs for all rights of way needed to construct the City's portion of the project. This shall include any damage to other properties. If incurred after August 25, 2003, regardless whether originally incurred by the State or the City, "acquisition costs" shall include the following:

- a. All compensation paid to any property owners or claimants, together with interest on the acquired property and any applicable severance damages.
- b. Any other amounts paid to owners or claimants or their attorneys or witnesses, including, but not limited to taxable costs, deposition fees, attorney's fees and copy charges, etc.
- c. Any amounts paid to third parties in connection with the acquisition of real property, including, but not limited to, court reporter fees and delivery costs, copy charges and appearance fees.
- d. Property taxes.
- e. Attorney General's Office. Legal fees shall be charged as follows:
 - Attorneys: \$100.00/hour
 - Non-Attorneys: Individual Salary plus 55%
 - Secretarial: No charge
- f. All costs of appraisal(s), title reports, plans, legal descriptions, exhibits for court papers, and trial exhibits.
- g. All fees for real estate analysts, appraisers, other outside experts and expert witnesses.

2. Some of the items in subparts f. and g. above may be performed by the State's (ADOT's) employees. These items shall be charged at the individual employee's salary plus 55%.

3. Each party is likely to accrue other expenses, such as managerial overviews and review. These costs are not acquisition costs within the meaning of this section.

4. The City shall pay all sums due and owing to any property owners, claimants, or any other parties, resulting from all Orders for Immediate Possession, Judgments, or other negotiated purchase prices. The State shall be responsible for all other associated acquisition costs.

5. In order to assess each party an equal share of the acquisition costs, the State shall, within 30 days after the City's final payment for the acquisition of any parcel, prepare an accounting pertaining to such parcel to determine the appropriate amounts owing to the City or the State. Within 30 days after the final accounting, the parties shall make the appropriate reimbursements.

IV. TRANSFER OF EXCESS LAND

Within 90 days after filing this Agreement with the Secretary of State, and pursuant to A.R.S. §28-7095(B), the State shall transfer to the City all of the State's rights, title and interest in and to that certain excess parcel known as L-K-010, as shown on Exhibit A, attached hereto. The State shall prepare the legal description and any other documents necessary to complete the transaction. The City shall continue to use this parcel for a public purpose.

V. MISCELLANEOUS PROVISIONS

1. The parties agree that all claims and disputes which arose from JPA 93-189 are hereby settled and resolved. The parties agree that JPA 93-189 is hereby terminated.

2. Pursuant to the terms of JPA 93-189, the City deposited a total sum of \$800,000.00 with the Arizona State Treasurer Local Government Investment Pool. This sum has increased with interest. The City and the State agree that the City may now use those funds, including any accrued interest and any future interest, in order help pay for the construction of the project. This shall include any necessary progress payments to the contractor(s). The City and the State further agree that upon receipt of an invoice from the City, the State shall release funds in the amount requested necessary for the City to make progress payments.

3. This agreement shall remain in force and effect until completion of said Project and all reimbursements, except any provisions herein for maintenance and indemnification, which shall be perpetual.

4. This agreement shall become effective upon filing with the Secretary of State.

5. This agreement may be canceled in accordance with Arizona Revised Statutes Section 38-511.

6. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

7. This agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The provisions of A.R.S. § 41-1463 and Executive Order Number 99-4 issued by the Governor of the State of Arizona are incorporated by this reference as a part of this Intergovernmental Agreement.

8. In the event of any controversy which may arise out of this agreement, the parties agree to submit the dispute to binding arbitration pursuant to A.R.S. § 12-1518.

9. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in

person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Projects Administration
205 South 17th Ave., MD 616E
Phoenix, Arizona 85007
FAX (602) 712-7424

City of Bullhead City
City Manager
1255 Marina Boulevard
Bullhead City, Arizona 86442-5733

Office of the Arizona Attorney General
Attn: Section Chief, Transportation Section
1275 W. Washington
Phoenix, Arizona 85007
FAX (602) 542-3646


10. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

CITY OF BULLHEAD CITY

STATE OF ARIZONA

Department of Transportation

BY 
DIANE VICK
Mayor

By 
BILL HIGGINS, P.E.
Acting State Engineer

ATTEST:

By 
DIANE HEILMANN
City Clerk 11/19/03

Section II, Acquisition of Right of Way, is acknowledged and approved by:


TERRY GODDARD
Attorney General

By 
Assistant Attorney General

RESOLUTION

BE IT RESOLVED on this 8th day of August, 2002, that I, the undersigned VICTOR M. MENDEZ, as Director of the ARIZONA DEPARTMENT OF TRANSPORTATION, have determined that it is in the best interests of the STATE OF ARIZONA that the DEPARTMENT OF TRANSPORTATION, acting by and through the INTERMODAL TRANSPORTATION DIVISION, to enter into an agreement with the CITY OF BULLHEAD CITY for the purpose of defining responsibilities for improvements and maintenance of the SR 95 Fox Wash drainage facility within ADOT right-of-way, for the benefit and safety of the traveling public.

Therefore, authorization is hereby granted to draft said agreement, which, upon completion, shall be submitted to the Deputy State Engineer for approval and execution.



SAM MAROUFKHANI
Deputy State Engineer, Development
Intermodal Transportation Division
for VICTOR M. MENDEZ, Director

RESOLUTION NO. 2003R- 095

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF BULLHEAD CITY, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN ARIZONA DEPARTMENT OF TRANSPORTATION, AND THE CITY OF BULLHEAD CITY AND AUTHORIZING THE MAYOR TO ENTER INTO AND EXECUTE THE AGREEMENT FOR THE PURPOSE OF OBTAINING FUNDING FOR IMPROVEMENT AND MAINTENANCE OF THE STATE ROUTE 95 FOX WASH DRAINAGE FACILITY

WHEREAS, the City of Bullhead City ("City") and ADOT previously entered into a joint participation agreement known as JPA 93-189 that provided for the joint construction of drainage facilities in the Fox Wash area to direct water under State Route 95 in Bullhead City; and

WHEREAS, the Arizona Department of Transportation ("ADOT"), through its Intermodal Transportation Division, has funding available for defining responsibilities for improvements and maintenance of the State Route 95 Fox Wash drainage facility within ADOT's right-of-way; and

WHEREAS, the City and ADOT have agreed to participate in the design and construction of new Fox Wash drainage facilities, which may include channels or dikes, and will convey flood waters for a 100-year event, for which ADOT will reimburse the City for actual costs in amounts not to exceed \$405,000 for construction and \$30,000 for design; and

WHEREAS, the Arizona Attorney General has agreed to acquire all rights-of-way in the name of the City, and the City and State have agreed to share equally in the acquisition costs for all necessary rights-of-way; and

WHEREAS, the Section 404 permits required to construct the drainage facilities in the Fox Wash area previously issued by the Corps of Engineers will expire on March 5, 2004 and construction of the improvements must be commenced prior to the expiration date of those permits; and

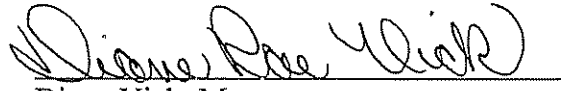
WHEREAS, it is in the direct and best overall interests of the residents of the City to enter into an intergovernmental agreement with ADOT for the purposes set forth hereinabove; and

WHEREAS, the City of Bullhead City is empowered to enter into this agreement by virtue of the provisions of A.R.S. §§48-572 and 11-952 and Bullhead City Code Section 2.04.080 and Chapter 2.72, and ADOT is empowered to enter into this agreement by virtue of the provisions of A.R.S. §28-401;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Bullhead City hereby approves the Intergovernmental Agreement between the City and ADOT, and hereby

authorizes the Mayor to enter into and execute said agreement on behalf of the city.

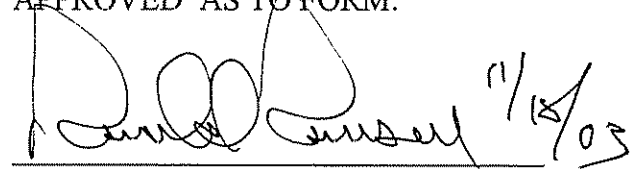
PASSED AND ADOPTED by the Mayor and City Council of the City of Bullhead City, Arizona, this 18th day of November, 2003.


Diane Vick, Mayor

ATTEST:


Diane Heilmann, City Clerk

APPROVED AS TO FORM:

 11/18/03
Ronald C. Ramsey, City Attorney

Description

That part of Lots 106, 107, 108, 109 and 110, CHAPARRAL BLUFFS, TRACT NO. 1121, according to the plat thereof recorded December 8, 1971 at Fee No. 71-21355 in the office of the County Recorder of Mohave County, Arizona, lying West of the following described line:

Line Description

Commencing at a Brass Cap in a hand hole marking the East corner of Section 29, Township 20 North, Range 22 West, Gila and Salt River Meridian, Mohave County, Arizona,

thence along a line parallel with and 18.752 meters (61.52 feet) westerly of the construction centerline of State Route 95 (TOPOCK - DAVIS DAM HIGHWAY), North $01^{\circ} 24' 47''$ West 0.246 meters (0.81 feet);

thence South $88^{\circ} 35' 13''$ West 7.606 meters (24.95 feet) to the POINT OF BEGINNING on the South line of said Lot 106;

thence North $00^{\circ} 50' 26''$ East 85.383 meters (280.13 feet);

thence North $27^{\circ} 44' 58''$ West 17.035 meters (55.89 feet) to the POINT OF ENDING on the northerly line of said Lot 110.

3164 square meters (34060 square feet) more or less.

EXHIBIT "A"

PROJECT: STP-065-1(13)	SECTION: Valencia Rd. - Marina Blvd.	PARCEL: D-K-022
095 MO 239 H3167 01R		JD/8-13-99

CITY OF BULLHEAD CITY

1255 MARINA BOULEVARD
BULLHEAD CITY, ARIZONA 86442

Ronald C Ramsey
City Attorney
John D Hickman
Staff Civil Attorney
Joan E. Gallagher
Paralegal

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(928)763-9400
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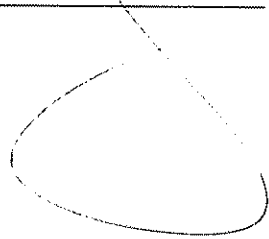
INTERGOVERNMENTAL AGREEMENT DETERMINATION

The foregoing Intergovernmental Agreement is an agreement between public agencies which has been reviewed pursuant to A.R.S. §11-952, as amended, by the undersigned city attorney who has determined that it is in the proper form and is within the powers and authority granted to the City of Bullhead City.

DATED this 15th day of November, 2003.



RONALD C. RAMSEY
City Attorney





OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

TERRY GODDARD
ATTORNEY GENERAL

CIVIL DIVISION
TRANSPORTATION SECTION
DIRECT 602.542.8859


INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR02-1465-TRN (JPA 02-66), an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED November 20, 2003.

TERRY GODDARD
Attorney General


JEFFREY T. MURRAY
Assistant Attorney General
Transportation Section

Enc. 651798